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4. Wills (§ 565 (1)*)—Construction—"Personal Estate"—"Use."—A will providing that executors should take charge of personal estate, "except so much as my wife may desire to keep for her use," and giving the widow certain income derived from rentals and interest, to be paid by executors "as she needs it so much as will give her comfortable support, my wife to be the judge of the amount she may need," held to give the widow only the tangible personalty; the word "use" not ordinarily importing any power of disposition of the corpus, but only the right to use and enjoy the benefit of the corpus, and such construction giving effect to testator's evident intention, the technical rule of construction of the language "personal estate" not being allowed to defeat the natural meaning of the language, as used in the will.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Use. For other cases, see 13 Va.-W. Va. Enc. Dig. 797.]

5. Wills (§ 481*)—Construction as to Testator's Death.—A will is to be construed as of the date of the death of the testator, and the testamentary provisions could not be changed to meet contingencies not foreseen by the testator.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

Appeal from Circuit Court, Montgomery County.

Bill by James H. Hurt and another against Sarah L. Hurt. Decree adjudging Sarah Hurt to be entitled to intangible personal property under the husband's will, and James H. Hurt and others appeal. Reversed in part.

W. B. Kegley, of Wytheville, for appellants.

W. S. Poage and *Jos. C. Shaffer*, both of Wytheville, for appellee.

MARKS et al. v. GORIA BROS.

Sept. 20, 1917.

[93 S. E. 675.]

1. Landlord and Tenant (§ 116. (2)*)—Tenancy from Year to Year—Termination at Common Law.—At common law, a tenancy from year to year could be terminated at the end of any yearly period either by the landlord or the tenant by giving six months' prior notice of purpose so to terminate.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

2. Landlord and Tenant (§ 116 (2)*)—Tenancy from Year to Year—Termination—Statute.—By direct provision of Code 1904, §

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2785, a tenancy from year to year may be terminated by either party giving notice in writing, prior to the end of any year, for three months, if it be for land within a city or town, of his intention to terminate the tenancy.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

3. Landlord and Tenant (§ 114 (1)*)—Tenancy from Year to Year—Creation—Termination.—A tenancy from year to year may be created by the express terms of a lease or contract, as well as by implication of law from the holding over of premises by a tenant with the assent of the landlord after expiration of a definite term of a former tenancy; but when a tenancy from year to year is created by the express terms of a lease or contract, the distinguishing characteristic that it may be terminated by either party on three months' written notice to the other is never absent.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 119, 188.]

4. Landlord and Tenant (§ 114 (1)*)—Tenancy from Year to Year.—If a lease demising premises for successive periods of a year had left the option to terminate on notice with both landlord and tenant, it would have created a tenancy from year to year.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 119.]

5. Landlord and Tenant (§ 90 (6)*)—Option to Hold Over—New Terms.—Where a lease for successive periods of a year, up to eight years, gave the lessees the option to continue after termination of each year by holding over, and to terminate the lease by giving notice within a certain time, on the lessees' exercising the right to hold over, the new term became an assured term for the time certain fixed by the lease.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 122, 167.]

6. Landlord and Tenant (§ 1*)—Entry into Possession by Tenant.—The relationship of landlord and tenant does not exist unless and until the tenant enters into possession.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 129.]

7. Landlord and Tenant (§§ 93, 94 (2)*)—Termination of Relationship.—Where a term or successive terms of fixed duration is or are demised by a lease, each term ends at the end of the time fixed by the lease for its duration; unless the tenant enters or holds over possession into another term the relationship of landlord and tenant as to such term never exists, and if the tenant has entered into possession for a preceding term under the lease, and vacates the premises at or before the end of the term, the relationship of landlord and tenant ceases at the end of the term without any notice from either party being necessary to terminate it, unless the parties contracted for notice to be given.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 171, 188.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

8. Landlord and Tenant (§ 94 (2)*)—Lease Demising Successive Terms—Holding Over.—Where the lease demised successive terms to be held at the tenant's option, and he holds over possession from one term into another, his succeeding possession is under the lease for the succeeding term demised by it, and if such term is for a term certain, as for one year, it is an estate for years, and will end at the end of such year without notice to or from the tenant to quit, unless the lease provides for notice.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 120, 167, 188.]

9. Landlord and Tenant (§ 94 (3)*)—Lease Demising Successive Terms—Holding Over—Notice of Termination.—If a lease demising successive terms provides for notice of termination to be given after a holding over, what notice must be given, and when, depends only upon the specific provision on the subject.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

10. Landlord and Tenant (§ 116 (2)*)—Tenancy from Year to Year—Statute.—If a tenant should hold over possession of premises from one term demised by a lease into another not demised, or so demised that the duration of such succeeding term is left uncertain by the lease in that both landlord and tenant have an option of terminating it at the end of any year on notice not provided by the lease but by law, a tenancy from year to year would be created in the tenant, to which Code, § 2785, providing that a tenancy from year to year may be terminated by either party giving notice, etc., would apply.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

11. Landlord and Tenant (§ 98*)—Tenants' Option to Terminate Lease—Effect.—The option given tenants to terminate a lease for successive periods of a year could not operate to give the lessors a like option, and did not change the estate demised from an estate for years into a modified estate at will, which is a tenancy from year to year.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 186.]

12. Landlord and Tenant (§ 94 (6)*)—Lease for Successive Terms of Year—Termination.—Where a lease for successive periods of a year up to eight provided that the lessees might terminate prior to a yearly period by giving written notice, on notice of termination being given by the lessees prior to a yearly period, the tenancy, which was before for a definite term of one year, ending on a fixed date unless another year was added at the option of the lessees, was not succeeded by another term for a year, but ended at the termination of the year.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

13. Landlord and Tenant (§ 37*)—Tenant Favored by Law.—In all cases of uncertainty, the tenant is most favored by law, because the landlord, having the power of providing expressly in his own favor, has neglected to do so, and also on the general principle that every man's grant is to be taken most strongly against himself.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 129.]

14. Frauds, Statute of (§ 58 (1*))—Landlord and Tenant (§ 114 (2*))—Tenancy from Year to Year.—Where a tenant enters under a lease void under the statute of frauds (Code 1904, § 2413) because not under a seal and for a longer term than five years, the tenancy is one from year to year.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 529; 9 Va.-W. Va. Enc. Dig. 119, 128.]

15. Landlord and Tenant (§ 94 (6*))—Lease for Successive Periods of Year—Notice.—If a lease for successive periods of a year, up to eight, gave the lessees an option to terminate by giving notice, notice for a reasonable length of time before the beginning of the succeeding yearly term was necessary.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

Error to Law and Chancery Court of City of Roanoke.

Attachment for rent by Gorla Bros. against Max Marks and others. To review a judgment for plaintiffs, defendants bring error. Reversed, and cause remanded for new trial in accordance with the opinion.

A. B. Hunt and *M. P. Burks, Jr.*, both of Roanoke, for plaintiffs in error.

Johnston & Izard, of Roanoke, for defendants in error.

COOPER'S ADM'R *v.* COMMONWEALTH et al.

Sept. 20, 1917.

[93 S. E. 680.]

1. Domicile (§ 2*)—Distinguished from "Residence."—"Residence" and "domicile" are not synonymous, "domicile" having the larger significance, and "residence" depending upon the subject-matter and connection in which it is used, and may be either a person's permanent or temporary abode. In construing statutes, the word "residence" depends upon the context and legislative purpose.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series. Domicile; Residence. For other cases, see 3 Va.-W. Va. Enc. Dig. 116; 4 Va.-W. Va. Enc. Dig. 781.]

2. Taxation (§ 254*)—Property of Nonresidents—Statute—"Residing Therein"—"Residing in His District."—The words "residing"

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.